REMARKS

Claims 1-12 have been examined and have been rejected. By this Amendment, Applicant is adding new claims 13 and 14. Thus, upon entry of the present Amendment, claims 1-14 will be all the claims pending in the present application.

I. Formal Matters

Applicant thanks the Examiner for initialing and returning the SB/08 Form submitted with the Information Disclosure Statement of March 19, 2004, indicating that the documents cited therein have been considered. Applicant also thanks the Examiner for indicating acceptance of the drawings filed on March 19, 2004, and for acknowledging the foreign priority claim and receipt of the priority document.

II. Objection to the Specification

The Examiner has objected to the title of the invention as allegedly not being descriptive. Applicant is amending the title in a manner believed to overcome the objection.

III. Rejection under 35 U.S.C. § 101

Claim 12 has been rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicant is amending claim 12 to recite "a computer-readable medium storing a program...", as suggested by the Examiner. Accordingly, Applicant respectfully requests the Examiner withdraw the rejection of claim 12 under 35 U.S.C. § 101.

IV. Rejection of claims 1-3 and 5-12 under 35 U.S.C. § 103(a)

Claims 1-3 and 5-12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Anderson et al. (U.S. Patent No. 5,917,488; hereinafter "Anderson"). Applicant respectfully traverses the rejection.

A. Claims 1-3

Applicant submits that claim 1 is patentable over the cited references. For example, claim 1 recites, *inter alia*, an image recording apparatus comprising "classification selection means for classification and/or selection on image data sets, and media recording means for recording the image data sets that have been subjected to the classification and/or the selection in a portable recording medium." On the other hand, Anderson teaches that when a sorted image data set is selected by the user, the image data set is displayed in a panel window, where the user can view and edit the image data set. *See* Anderson at col. 8, lines 35-49. To the extent the display of a group of images implicates its storage, there is no requirement of storage to a portable medium. Accordingly, Applicant submits that claim 1 is patentable over the cited reference at least because Anderson fails to disclose storage to a portable medium. In addition, Applicant adds new dependent claim 13 to more particularly claim the portable medium.

Since claim 2 is dependent upon claim 1, Applicant submits that it is patentable at least by virtue of its dependency.

With regard to claim 3, the Examiner cites col. 3, lines 15-20 of Anderson as allegedly teaching classification of image data sets according to scene characteristics including at least one of: colors of images represented by the image data sets, density distribution therein, and a shape

of a subject therein. *See* Office Action at pages 6-7. Applicant submits that the classification criteria described in claim 3 are not obvious variations of the teachings of Anderson. In the present application, the Examiner has not articulated a reason that one of ordinary skill in the art would combine the teachings of Anderson with the admitted prior art to achieve the feature of classifying image data sets based on colors of images, density distribution, or the shape of a subject therein. The reference's mere teaching of grouping image data based on temporal, spatial, or some physical relationship, or by a user-defined criterion, fails to provide a reason why one of ordinary skill in the art would classify image data based on the criteria identified in claim 3. The Examiner's alleged reasoning that Anderson teaches a user friendly method for displaying and manipulating image data sets and that the device in Anderson and the admitted prior art are both microcontroller-controlled devices for processing images, fails to articulate a reason for classifying image data as claimed in claim 3. Accordingly, in addition to being patentable over the cited references by virtue of its dependency from claim 1, Applicant submits that claim 3 is patentable over the cited references for at least the foregoing reason and respectfully requests the Examiner to reconsider and withdraw the rejection of claim 3.

B. Claims 5-12

Since claims 5-10 are dependent upon claim 1, Applicant submits that such claims are patentable at least by virtue of their dependency.

With regard to claim 8, the Examiner alleges that Anderson teaches recording image data sets that have been subjected to classification and/or selection in a format that enables display of a slide show. The Examiner cites items 614(1)-614(m) of Figure 6 as teaching this feature. *See*

Office Action at page 12. However, as explained by the reference, these items simply designate thumbnails corresponding to natural groups, so as to differentiate natural groups from a still group or programmed group. *See* Anderson at col. 8, lines 13-34. Although the thumbnail for natural groups may have a frame or border indicative of a movie film, the reference fails to teach that such image data sets are recorded in a format that enables display of a slide show. Accordingly, Applicant submits that claim 8 is patentable over the cited references for the foregoing reason, in addition to being patentable by virtue of its dependency from claim 1.

Since claims 11 and 12 contain features that are similar to the features discussed above in conjunction with claim 1, Applicant submits that such claims are patentable for at least similar reasons.

V. Rejection of claim 4 under 35 U.S.C. § 103(a)

Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Anderson, in further view of Okumura (U.S. Patent No. 5,878,156; hereinafter "Okumura"), in further view of Examiner's Official Notice.

The Examiner maintains that Okumura teaches the feature of selecting images representing a person or persons whose eyes are not closed, as claimed in claim 4. However, Applicant submits that the device in Okumura teaches away from combining the teachings of Okumura, Anderson and the admitted prior art to achieve the claimed invention. For instance, the device of Okumura detects an image of a target person and subsequently processes the image to determine whether the person's eyes are open or closed. *See* Okumura at col. 1, lines 8-16. However, the image processing conducted in Okumura would not work with device of the

present invention, thus teaching away from the combination of Okumura and Anderson. For example, the first embodiment of Okumura teaches that detection of whether a person's eye is open or closed is based upon measuring the distance between the center of the person's eyebrow and the center of the person's eye and comparing that distance to a reference threshold distance. *See* Okumura at Figures 9, 10A, and 10B, and col. 7, lines 43-67. Such a detection method may be effective in a situation where only a single person is sitting at a fixed distance and angle in relation to the camera, such as an automobile driver. However, in the present invention of claim 4, where it is necessary to monitor the eyes of multiple persons placed at variable distances from the camera, and at various angles to the camera, such a detection method will be ineffective because measuring the distance between the center of a person's eye and eyebrow may be impossible depending upon the angle at which the person is facing. Furthermore, the method would be ineffective because the distance between the eye and eyebrow would vary depending upon the person's distance and angle relative to the camera, such that a single threshold distance could not be used to determine whether the eye was closed or open. The other embodiments described in Okumura also detect whether an eye is opened or closed by measuring and comparing distances between the eye and eyebrow, such that the method would be ineffective in the present invention for the reasons explained with regard to the first embodiment.

In the seventh and eight embodiments of Okumura, the area and width of a subject's eyebrow and eye are calculated, respectively. In the seventh embodiment, for example, the device calculates the ratio between the eyebrow area and the eye area at different times. When the subject's eye closes, the eye area decreases, which changes the ratio of eyebrow area to eye

area. The device detects this ratio change to determine when the subject's eye is closed. *See* Okumura at col. 14, lines 59-67, and col. 15, lines 1-8. However, such a method requires comparing ratios taken from multiple images to detect a ratio variation. In the present invention of claim 4, detection of closed eyes must be accomplished on a single image. In other words, it is impossible to detect a change in ratios as taught by Okumura using only a single image, because in the present invention of claim 4, there is no second image to which the first image can be compared. The eighth embodiment of Okumura suffers from a similar deficiency.

Therefore, Applicant respectfully submits that there is no "apparent reason to combine the known elements" in the manner claimed by the instant application. *See KSR Int'l v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-96 (2007) (citing *United States v. Adams*, 383 U.S. 39, 51-52 (1966), stating that "when the prior art teaches away from combining certain known elements, discovery of a successful means of combing them is more likely to be nonobvious."). Accordingly, Applicant submits that claim 4 is patentable over the cited references for at least the foregoing reasons.

VI. Newly Added Claims

Applicant has added new dependent claims 13 and 14. Since claims 13 and 14 are dependent upon claim 1, Applicant submits that such claims are patentable at least by virtue of their dependency.

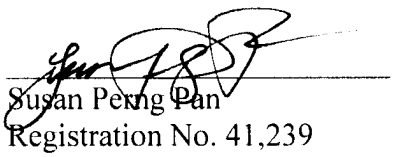
VII. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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